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5 Attorneys for SECURED CREDITOR
COUNTY OF SAN BERNARDINO, CALIFORNIA
6 A CALIFORNIA TAXING AUTHORITY

7
8 **IN THE UNITED STATES BANKRUPTCY COURT**
9 **SOUTHERN DISTRICT OF NEW YORK**

10 In re) Case No. 12-12020 (MG)
11 RESIDENTIAL CAPITAL, LLC, et)
al.,) Chapter 11
12 Debtors.) **LIMITED OBJECTION OF**
13) **COUNTY OF SAN BERNARDINO**
14) **TO CHAPTER 11 PLAN**
15) **PROPOSED BY RESIDENTIAL**
16) **CAPITAL, LLC, et al.**
17) **AND THE OFFICIAL**
18) **COMMITTEE OF UNSECURED**
19) **CREDITORS**
20)
21) **DATE: November 19, 2013**
22) **TIME: 10:00 AM**
23) **CRTRM: 501**
24) **US Bankruptcy Court,**
25) **Southern District of NY,**
26) **One Bowling Green, New**
27) **York, New York 10004**

28 **TO THE HONORABLE MARTIN GLENN, UNITED STATES BANKRUPTCY**
JUDGE, AND TO INTERESTED PARTIES:

29 The County of San Bernardino, California, a California
30 Taxing Authority ("San Bernardino") hereby objects, as follows, to
31 the Debtor's Chapter 11 Plan Proposed by Residential Capital, LLC,
32 et al and the Official Committee of Unsecured Creditors (hereafter
33 "Plan").

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION.

3 Debtors own numerous parcels of real property in San
4 Bernardino County, California, as further identified in Exhibit A,
5 which is attached hereto. Also at issue are numerous parcels with
6 respect to title in GMAC as further identified in Exhibit B, which
7 is attached hereto. The grand total of the remaining parcels on
8 both exhibits is \$22,946.88. Declaration of Arebalo previously
9 filed with objection to disclosure statement.
10

11 The real properties are subject to the assessment of secured
12 local property taxes by San Bernardino under California State law.
13 The treatment of the real property taxes in the Plan is the primary
14 grounds of this Objection.
15

16 The San Bernardino County Office of the Tax Collector filed a
17 claim on or about November 8, 2012¹ for \$97,493.72 in real property
18 taxes, including amounts due for tax years 2008 through 2012. This
19 amount is subject to increase pursuant to 11 U.S.C. Section 506(b).

20 On January 1, 2013 the current year tax liens attached to
21 each of the parcels for tax year 2013-14. San Bernardino is
22 currently updating the amounts due and will provide them as
23 requested. The entire amount of taxes due is therefore substantial.
24 To conclude, there are both substantial pre-petition and post-
25 petition taxes due on the parcels, the amounts of which continue to
26 increase on a monthly basis due to the imposition of additional
27

28 ¹The Claim was stamped "RECEIVED November 08, 2012 KURTZMAN
CARSON CONSULTANTS".

1 fees and interest.

2 **II. THE PLAN FAILS TO PROPERLY PROVIDE FOR SECURED TAX PAYMENTS.**

3 **A. Post-Petition Secured Property Taxes.**

4 Post-Petition Secured Property Taxes constitute an
5 Administrative Claim and should be so treated. (11 USC Section
6 503(b)(1)(B)(I)) Instead, Debtor has entirely failed to mention any
7 county property taxes, from any county, in the Plan. In the instant
8 case, this would include fiscal tax year 2013-14 as the tax liens
9 attached on January 1, 2013.
10

11 Post-petition secured property taxes should be included in
12 the section of the Plan for Administrative Claims, but they are not
13 mentioned anywhere. The post-petition administrative tax claims of
14 San Bernardino County should be included in the Plan, as they have
15 not been paid or discharged, and remain debts of the estate.
16 Apparently the Plan authors view property taxes as constituting
17 priority claims. However, under California law they are not
18 priority claims. Instead, they are secured administrative claims.
19

20 San Bernardino County respectfully proposes that the
21 following language for post-petition property taxes be added to
22 the Administrative Claim section of the Plan so as to cure this
23 defect:

24 The secured claim of the San Bernardino County California
25 Taxing Authority will be paid timely and in the normal
26 course of business with all applicable costs, fees, charges
27 and interest pursuant to 11 U.S.C. Sections 506(b) and 511.
28 A failure by the Debtor to make a payment to San Bernardino
County pursuant to the terms of the Plan shall be an Event
of Default. If the Debtor fails to cure an Event of Default
as to tax payments within ten (10) days after service of
written notice of default, then the San Bernardino County

1 Taxing Authority may enforce the entire amount of its
2 claim, plus all penalties and interest accrued under state
3 law, against the Debtor in accordance with applicable state
4 law remedies.

5 Insertion of the above language will resolve the objection
6 of San Bernardino as to treatment of its post-petition secured
7 property tax claims.

8 San Bernardino notes that since the 2005 Reform Act,
9 governmental units are not required to submit a request for
10 payment of an administrative expense. 11 U.S.C. Section
11 5039(b)(1)(D) states:

12 Notwithstanding the requirements of subsection (a) a
13 governmental unit shall not be required to file a request
14 for the payment of an expense described in subparagraph (B)
15 as a condition of its being an allowed administrative
16 expense.

17 Nevertheless, inclusion of the above language will place
18 all parties on notice as to the requirement to pay the post-
19 petition taxes as a secured claim, and thereby avoid potential
20 future litigation.

21 **B. Pre-Petition Secured Property Taxes.**

22 Under California law, pre-petition property taxes
23 constitute secured claims (see below) and should therefore be
24 specifically included in the section of the Plan for secured
25 claims. However, the Plan fails to mention any secured claims for
26 property taxes filed by any county.

27 The danger with including the claims with priority claims
28

1 is that the entire amount of the secured real property taxes may
2 not be paid in full. (Especially the interest)

3 To remedy this failure as to San Bernardino, San Bernardino
4 suggests insertion of the following language under the section of
5 the Disclosure Statement and add a section for Secured Claims:

6 The secured claim of the San Bernardino County California
7 Taxing Authority will be paid over in full on the
8 effective date with all applicable costs, fees, charges
9 and interest pursuant to 11 U.S.C. Sections 506(b) and
10 511. The secured claimant shall retain its lien until the
11 secured tax is paid in full. The payments shall be made
12 monthly. A failure by the Debtor to make a payment to San
13 Bernardino County pursuant to the terms of the Plan shall
14 be an Event of Default. If the Debtor fails to cure an
15 Event of Default as to tax payments within ten (10) days
16 after service of written notice of default, then it may
17 enforce the entire amount of its claim plus all penalties
18 and interest accrued under state law, against the Debtor
19 in accordance with applicable state law remedies. The
20 payments shall commence on the effective date.

21 Inclusion of the above language will resolve the objection
22 of San Bernardino as to treatment of its pre-petition secured
23 property taxes. This language is especially appropriate given
24 that the nature of the claim is that of a secured one and
25 includes all amounts due ie "with all applicable costs, fees,
26 charges and interest pursuant to 11 U.S.C. Sections 506(b) and
27 511.

28 San Bernardino therefore requests that the Plan provide for
the language stated above. San Bernardino also requests post
petition interest at the state statutory rate until the amounts
are paid, and that such provision be set forth in the
Administrative Claim section.

1 III. REAL PROPERTY TAX ASSESSMENTS ARE MANDATED UNDER CALIFORNIA
2 LAW.
3

4 Under California State Law, every piece of real property is
5 subject to taxation.² California Revenue and Taxation Code section
6 401 states: "Every assessor shall assess all property subject to
7 general property taxation at its full value." Under California
8 State Law, real property is to be assessed at the same percentage
9 of fair market value.² California Revenue and Taxation Code Section
10 401.3 provides that: "The assessor shall assess all property
11 subject to general property taxation on the lien date as provided
12 in Articles XIII and XIII A of the Constitution. . . ." Real
13 property taxes are assessed as of January 1 ("the lien date")
14 of the year in which taxes become due.³
15

16
17 ² California Revenue and Taxation Code section 104 states: "Real
18 estate or real property includes: (a) The possession of, claim to,
19 ownership of or right to the possession of land."

20 In California, property tax assessments consist of two
21 components. The first component is the assessed value. The second
22 is the tax rate. The latter is applied against the former to
23 calculate the amount of taxes due. This equation is sometimes
24 known as the tax ratio. For taxable real property, the assessed
25 value is determined at the same percentage of fair market value.
(California Constitution Article XIII section 1)

26 ³ California Revenue and Taxation Code, section 117 states:
27 "Lien date is the time when taxes for any fiscal year become a lien
28 on the property." California Revenue and Taxation Code Section 118
defines assessment year as "the period beginning with a lien date and
ending immediately prior to the succeeding lien date for taxes levied
by the same agency."

Revenue and Taxation Code section 2192 states: " . . . all tax
liens attach annually as of 12:01 a.m. on the first day of January
preceding the fiscal year for which the taxes are levied..."

In California, property taxes are in rem and are payable only through
sale proceeds. California Revenue and Taxation Code
Section 2187 states: " Every tax on real property is a lien against

1 Additionally, the real property taxes are a first lien on the
2 property. California Revenue and Taxation Code Section 2192.1
3 states:

4
5 Every tax declared in this chapter to be a lien on real
6 property . . . have priority over all other liens on the
7 property, regardless of the time of their creation. Any tax
8 . . . described in the preceding sentence shall be given
9 priority over matters including but not limited to any
recognizance, deed, judgment, debt, obligation, or
responsibility with respect to which the subject real
property may become charged or liable.

10 Since the taxes are first priority liens on the property,
11 they constitute a secured claim, and must be treated in that
12 manner.

13
14 **IV. THE PLAN IS NOT CONFIRMABLE.**

15 In the present case, the plan is not confirmable because of the
16 reasons cited above. This limited objection should therefore be
17 sustained.

18
19 **V. CONCLUSION.**

20 The court should decline to approve the Plan until the
21
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26
27 the property assessed." See Long Beach v. Aistrap, 164 Cal. App. 2d
28 41 (1958).

1 provisions suggested above, or comparable provisions, are included,
2 voluntarily or by court order.

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Dated: October 21, 2013

ROMERO LAW FIRM

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By /S/MARTHA E. ROMERO
MARTHA E. ROMERO
Attorney for Secured Creditor
County of SAN BERNARDINO, CA
A California Taxing Authority

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EXHIBIT A

APN: 0108-441-09-0000
Situs: 1424 N. Grove Ave.
Ontario, CA 91762
Amount: 537.64 (2012) as of 10/31/2013
UPDATE SAME AMOUNT

APN: 0409-141-03-0000
Situs: 15140 Sage St.
Hesperia, CA 92345
Amount: \$62.69 (2012 Supp. Bills) (as of 03/13/13)
UPDATE PAID -0- DUE

APN: 3090-561-07-0000
Situs: 17547 Dayton St.
Victorville, CA 92395
Amount: \$96.33 (2012- Supp. Bill that is billed to GMAC) - New Owner (as of 03/13/13)
UPDATE \$97.01 (thru 10/31/13)

APN: 3095-151-68-0000
Situs: 12208 Cobblestone Dr.
Victorville, CA 92392
Amount: \$211.36 (2012- Supp. Bill that is billed to GMAC) - (AS OF 8/31/13) New Owner
(as of 03/13/13)
UPDATE \$214.01 (thru 10/31/13)

Grand Total: \$908.02

UPDATE TOTAL: \$849.66

EXHIBIT B

APN: 0113-534-12-0000
Situs: 2019 Cherry Hill Ct.
Ontario, CA 91761
Amount: \$476.26 (2008)(thru 8/31/13)
Update: \$481.63 (thru 10/31/13)

APN: 0140-262-18-0000
Situs: 820 W. 7th St.
San Bernardino, CA 92410
\$511.25 (2008) as of 08/31/2013.
Update: \$517.03 (thru 10/31/13)

APN: 0146-193-15-0000
Situs: 114 W. 13th St.
San Bernardino, CA 92405
\$740.19 (2008) as of 08/31/2013
Update: \$747.55 (thru 10/31/13)

APN: 0170-121-15-0000
Situs: 1331 Sylvan Blvd.
Redlands, CA 92374
Amount: \$1,996.62 (2009) as of 08/31/2013
Update: \$2030.61 (thru 10/31/13)

APN: 0193-253-11-0000
Situs: 9633 Juniper Ave.
Fontana, CA 92335
Amount 1,199.02 (2008) as of 08/31/2013
Update: \$1215.92 (thru 10/31/13)

APN: 0193-472-16-0000
Situs: 16396 Windcrest Dr.
Fontana, CA 92337
Amount \$1,076.39 (2009) as of 08/31/2013
Update \$1093.40 (thru 10/31/13)

APN: 0228-811-61-0000
Situs: 15687 Rockwell Ave.
Fontana, CA 92336
Amount \$1,456.27 (2008) as of 08/31/2013
Update \$1477.98 (thru 10/31/13)

APN: 0237-311-43-0000
Situs: 14925 Woodcrest Dr.
Fontana, CA 92337
Amount \$2,890.14 (2008) as of 08/31/2013
Update: \$2933.75 (thru 10/31/13)

APN: 0271-501-09-0000
Situs: 1285 E. 39th St.
San Bernardino, CA 92404
Amount \$386.03 (2009) as of 08/31/2013
Update \$390.18 (thru 10/31/13)

APN: 0318-181-22-0000
Situs: 33832 Nebraska St.
Yucaipa, CA 92399
Amount \$137.99 (2010) as of 08/31/2013
Update \$139.27 (thru 10/31/13)

APN: 0332-045-09-0000
Situs: 698 W. Victoria Ct.
San Bernardino, CA 92415
Amount \$96.63 (2008) as of 08/31/2013
Update: \$97.07 (thru 10/31/13)

APN: 0343-174-37-0000
Situs: 23058 Oak Ln.
Crestline, CA 92325
Amount \$295.86 (2009) as of 08/31/2013
Update: \$298.50 (thru 10/31/13)

APN: 0399-152-08-0000
Situs: 17891 Capri St.
Hesperia, CA 92345
Amount: \$1,156.76 (2008) (as of 8/31/13)
Update: \$1172.99 (thru 10/31/13)

APN: 1023-311-33-0000
Situs: 13450 Treasure Way
Chino Hills, CA 91709
Amount \$2,976.24 (2008) (as of 8/31/13)
Update: \$3021.50 (thru 10/31/13)

APN: 1028-021-10-0000
Situs: 4267 Lugo Ave.
Chino Hills, CA 91709
Amount \$1,272.95 (2008) as of 08/31/2013
Update: \$1292.15 (thru 10/31/13)

APN: 1062-601-12-0000
Situs: 6424 Garnet St.
Rancho Cucamonga, CA 91701
Amount \$1,774.34 (2008) as of 08/31/2013
Update: \$1800.91 (thru 10/31/13)

APN: 1089-551-84-0000
Situs: 12492 Veronica Ct.
Rancho Cucamonga, CA 91739
Amount \$1,931.03 (2008) as of 08/31/2013
Update: \$1945.88 (thru 10/31/13)

APN: 3057-151-48-0000
Situs: 13903 Plantain St.
Hesperia, CA 92344
Amount \$111.63 (2011) as of 08/31/2013
Update \$112.57 (thru 10/31/13)

APN: 3103-472-24-0000
Situs: 14447 Laguna Ct.
Adelanto, CA 92301
Amount \$790.70 (2008) as of 08/31/2013
Update \$802.20 (thru 10/31/13)

APN: 3112-571-15-0000
Situs: 15284 Nanticoke Rd.
Apple Valley, CA 92307
Amount \$762.56 (2008) as of 08/31/2013
Update: \$772.04 (thru 10/31/13)

Grand Total: \$22,038.86

UPDATE AMOUNT \$22,343.13 (by 10/31/13)